



ASBESTOS REGULATORY CLARIFICATIONS

Toxic Substances Control Division

ARC – 018

November 2001

Subject: Asbestos Survey Conducted Prior to December 1998

BACKGROUND

In December 1998 the Texas Department of Health (TDH) made comprehensive changes to the Texas Asbestos Health Protection Rules (TAHPR), including 25 TAC §295.34(c), which addresses the requirements for asbestos inspections (surveys) in public buildings. As a result of the changes to this section, concern about the validity of building surveys performed prior December 1998 has been expressed. This document seeks to clarify the TDH's position with regard to building surveys performed prior to the December, 1998 rule change.

RESPONSE

Building surveys performed prior to the December 1998 rule change will still be accepted if the survey was done in compliance with the regulations in effect at the time the survey was completed, and if the survey continues to reflect the characteristics of the building in which a demolition or renovation project will occur.

DISCUSSION

The change in the TAHPR with regard to Section 295.34(c) was not intended to invalidate any existing building surveys. It was intended to provide more specific direction as to the methodology required to conduct an asbestos survey in a regulated building or facility.

Prior to December 1998, Section 295.34(c) stated:

Prior to any renovation or dismantling within a public building, including preparation for partial or complete demolition, as required by 40 CFR §61.145 Environmental Protection Agency (EPA), owners must have the building surveyed by a licensed asbestos inspector; facility owners must have the facility surveyed by an accredited inspector if the facility is a public or commercial building as defined in the Asbestos School Hazard

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Abatement Reauthorization Act, 1990. The work area and all immediately surrounding areas must be surveyed prior to partial renovation or demolition. This survey must be produced upon request by the Texas Department of Health (department).

As a result of the rule change, the section was amended as follows:

Prior to any renovation or dismantling within a public building, commercial building, or facility including preparations for partial or complete demolition, as required by 40 CFR, §61.145, owners must have a thorough inspection performed. The work area and all immediately surrounding areas which could foreseeably be disturbed by the actions necessary to perform the project must be inspected and sampled as applicable prior to renovations or demolition. A copy of the inspection report must be produced upon request by the Texas Department of Health (department). Once an inspection is complete, care must be taken to ascertain the contents of any new products installed in the building that would void the accuracy and validity of the survey. If an inspection cannot be performed before demolition or renovation is started due to the building being structurally unsound and unsafe to enter, all material must be presumed to contain asbestos and must be treated as ACM.

(1) In a public building the inspection must be performed by a licensed asbestos inspector. Criteria to rebut the presence of ACM in a public building shall be based upon inspections which conform to accepted standards such as the sampling protocol specified in 40 CFR Part 763 Subpart E, commonly referred to as the "AHERA" rules which are the required method for schools. Other factors should be taken into consideration when deciding on the best method to determine the location, extent and condition of the ACM in a non-school building. Multi-story buildings may require investigation of the systems in the building in order to identify all possibilities of ACM occurrence. Under no circumstances will less than three samples for each homogeneous area be collected. During the construction of a new public building, a licensed inspector, or project architect or engineer, may compile the information from material safety data sheets (MSDS) of all products used in the construction of the building and, finding no asbestos in any of those products, make a statement that no ACM was used during the construction. This statement, together with copies of the MSDSs, can be used as an asbestos inspection.



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(2) In a commercial building the inspection must be performed by an accredited inspector.

(3) In a facility the inspection must conform with 40 CFR §61.145.

The revised section provides guidance on how to conduct and maintain a building survey. It also makes a change in usage from the term “*survey*” to the term “*inspection*.” It does this to match the terminology used in the NESHAP regulations (40 CFR Part 61, Subpart M). The two terms are synonymous within the context of the TAHPR.

FREQUENTLY ASKED QUESTIONS

1. Are asbestos inspections performed prior to the 1998 rule change still considered valid by the TDH?

Answer: Yes, asbestos inspections performed prior to the December, 1998 rule change are valid if the inspection was done in compliance with the regulations in effect at the time the inspection was completed, and if the inspection continues to reflect the characteristics of the building in which a demolition or renovation project will occur.

2. When does a new survey need to be done? For example, if a building had a partial asbestos inspection in 1996, and will be demolished in 2000. Does this building have to have a new inspection?

Answer: Any area not addressed in the original inspection will need to be inspected in accordance with the TAHPR. The owner may elect to re-inspect the entire building in accordance with the current requirements of the TAHPR

3. How old does a building have to be to require an asbestos inspection?

Answer: All buildings, regardless of age or date of construction must have a survey prior to the start of renovation or demolition.



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4. Can Material Safety Data Sheets (MSDS), indicating that there is no asbestos in a building be used as an asbestos inspection?

Answer: Yes, if the MSDS sheets are accompanied by a signed statement, from a licensed inspector or the project architect or engineer, proclaiming that no asbestos-containing building materials were used in the construction of the building. The sheets and signed statement must be made available to TDH in lieu of a survey.

Agree to form and substance

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